

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPLAINT OF AMERICAN POSTAL
WORKERS UNION, AFL-CIO

Docket No. C2012-2

AMERICAN POSTAL WORKERS UNION, AFL-CIO,
MOTION FOR AN EMERGENCY ORDER
(June 13, 2012)

The American Postal Workers Union, AFL-CIO ("APWU") has filed a complaint under Section 3622 of Title 39 seeking: 1) a declaration that implementation of the proposed changes prior to the Commission's issuance of its Advisory Opinion would violate Section 3661 of the PRA (39 U.S.C. § 3661); and 2) an order directing the USPS not to implement the proposed changes until after the Commission issues its Advisory Opinion.¹ Pursuant to Rule 21 of the Commission's Rule of Practice and Procedure ("Rules"), APWU hereby moves the Commission for an emergency order directing the USPS not to implement its proposed changes in service standards for First Class mail, periodicals and standard mail and related operational changes described in the USPS' September 21, 2011 Advance Notice of Proposed Rulemaking ("ANPR") and December 15, 2011 Notice of Proposed Rule ("NPR") that are the subject of the Request for an Advisory Opinion ("Request") in N2012-1 and the changes resulting from the New Rule published by the Postal Service in the Federal Register on May 21, 2012, that gave rise to this docket until the Commission has ruled on APWU's complaint. APWU further requests that the Commission require an expedited USPS response to this motion for emergency relief by June 20, 2012, such that the Board may rule on this motion for an emergency order on or before June 30, 2012.

¹ APWU is not relying on the alleged violation of Section 3691 as a basis for emergency relief.

I. FACTS

Section 3661 of the PRA (39 U.S.C. § 3661) provides (in pertinent part):

(b) When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change.

(c) The Commission shall not issue its opinion on any proposal until an opportunity for hearing on the record under sections 556 and 557 of title 5 has been accorded to the Postal Service, users of the mail, and an officer of the Commission who shall be required to represent the interests of the general public. The opinion shall be in writing and shall include a certification by each Commissioner agreeing with the opinion that in his judgment the opinion conforms to the policies established under this title.

On September 21, 2011, the USPS published its ANPR to change its service standards for First Class mail, periodicals and standard mail which would extend expected delivery times for various classes of mail such as eliminating any expectation of one day delivery for First Class Mail and changing the expectation as to the percentage of First Class mail delivered within two days from 26.6 percent to 50.6 percent and changing the expectation as to the percentage of First Class mail delivered within three days from 31.6 percent to 49.1 percent. Delivery times for periodicals would also be extended. The ANPR stated that by ending overnight delivery for First Class mail, the USPS could change times during which it processes mail, which is currently done between 12:30 am and 7:00 am, to 12:00pm to 4:00am the next day. The changed processing times would require mailers to deliver mail to the USPS by 8:00 am each day rather than in the evening before the start of processing at 12:30am. The ANPR further stated that as a result of the proposed service standard changes, the USPS would be able to reduce the number of its mail processing facilities from over 500 locations to fewer than 200 locations because of the longer processing windows.

On December 5, 2011, the USPS filed its Request which stated that the proposed changes would “eliminate the expectation of overnight service for significant

portions of First Class Mail and Periodicals”; additionally, “the two-day delivery range would be modified to include 3 digit zip code origin destination pairs that are currently overnight, and the three day delivery range would also be expanded”. The Request further said that “[t]he service changes described in this request potentially affect every sender and recipient of mail served directly by the United States Postal Service, and are likely to affect most of them”. The Request acknowledged that “[w]hen the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide basis, it is required by section 3661(b) to request that the Postal Regulatory Commission issue an advisory opinion on the service change, and to submit a request within a reasonable time prior to the effective date of the proposed service change”. The Request further stated that there should be no doubt that the service changes described in the Request “will be nationwide within the meaning of Section 3661(b)”.

On December 15, 2011 the USPS published its NPR stating that the Postal Service had “decided to continue pursuing the proposal [described in the ANPRM] with some changes by issuing the proposed rules”. The NPR described the proposed rule change as revising service standards and stated that “[t]he most significant revision would largely eliminate overnight service for First Class Mail”.

On January 12, 2012, the Commission issued a procedural schedule for its consideration of the USPS Request in Docket No. N2012-1. The Commission’s schedule provided for opening of hearings on March 20, 2012 with the beginning of the Postal Service’s direct case, hearings for rebuttal evidence in June of 2012 and the close of briefing on July 20, 2012. On January 18, 2012 the USPS filed a motion seeking alteration of the case schedule. The USPS said that its motion was “an attempt to secure the Commission’s Advisory Opinion prior to the conclusion of its pending rulemaking on changes in service standards and prior to May 16, 2012, the date on which the Postal Service would like to begin implementation of the service changes” (footnote to NPR omitted). The USPS also noted that it had “voluntarily announced a decision to delay the closing or consolidation of any mail processing facility until May 15, 2012.

On January 31, 2012, the Commission denied the USPS motion for alteration of the case schedule. Among other things, the Commission noted that the Postal Service Request was complex including the testimony of 13 witnesses and over 50 library references, that the USPS had already sought more time to response to Presiding Officer information requests and party discovery requests, and that the USPS desire for expedited handling had to be balanced against the Commission's obligation to afford due process to participants in the proceeding. The Commission also noted that no party, including the USPS, had made any suggestion that would have resulted in a decision within the time frame sought by the USPS in the motion for reconsideration; that the USPS had not even suggested a revised schedule that would result in a decision within the time frame it desired; and that the schedule proposed by the USPS at the scheduling hearing would have provided for submission of reply briefs in mid-June only a little more than one month less than the schedule established by the Commission and more than two months after the date for decision sought by the USPS in its motion for reconsideration.

On Monday May 21, 2012, the USPS published a New Rule in the Federal Register. In the New Rule, the Postal Service announced that it would establish an "interim version" of the new rules that would be in effect from July 1, 2012, through January 31, 2014. Then, on February 1, 2014, the "final version" of the plan would go into effect. Under the New Rule, the interim version of the rule changes would be implemented on July 1, 2012. The USPS stated that "[t]he interim version of the new rules differs from the final version in three respects:

- (1) the interim version applies an overnight service standard to all intra-Sectional Center Facility (SCF) First-Class Mail, regardless of the point of entry or level of preparation, whereas the final version applies it only to intra-SCF First-Class Mail pieces that are entered at the SCF and meet specified preparation and entry time requirements; (2) the interim version applies a two-day service standard to First-Class Mail pieces if there is a six-hour or less driving time between the pieces' origin Processing and Distribution Center or Facility (P&DC/F) and destination Area Distribution Center (ADC), whereas the final version applies it if there is a six-hour or less driving time between the pieces' origin P&DC/F and destination SCF; and (3) the interim version modifies the delivery day range for end-to-end Periodicals in the contiguous forty-eight states from the current one to nine days to two to nine days, while the final version modifies it further to three to nine days

(under both the interim and final versions, there will continue to be an overnight service standard for qualifying destination-entry Periodicals).

The USPS further stated that under the New Rule, it can expand its nightly processing window, thereby reducing the number of processing locations needed in the network. “Presently, the Postal Service’s delivery point sequencing (DPS) operations are generally run for six and one-half hours per day, from 12:30 a.m. to 7 a.m. Once implementation of Phase One [under the interim version of the New Rule] is complete, the DPS window will expand to up to ten hours, from 8 p.m. to 6 a.m. This change will facilitate the consolidation of the mail processing operations of approximately 140 facilities. Then, once implementation of Phase Two [the final version of the New Rule] is complete, the DPS window will expand to up to sixteen hours, from 12 p.m. to 4 a.m. This will make possible the consolidation of the mail processing operations of approximately 230 facilities (inclusive of the approximately 140 consolidated in Phase One).”

If the USPS implements the changes described in the New Rule before the Commission issues its Advisory Opinion, the USPS will have effected “a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis” without first receiving and considering an Advisory Opinion from the Commission.

If the USPS implements the changes described in the New Rule before the Commission issues its Advisory Opinion, and the PRC later issues an Advisory Opinion recommending that the USPS not adopt the proposed changes, the USPS will have incurred substantial costs in implementing the proposed changes and would incur additional substantial costs if it later sought to undo the changes it had already made in response to the Commission’s Advisory Opinion.

Additionally, mailers, including APWU, will have to adjust their production and delivery schedules to deliver items to be mailed at the new delivery times established by the New Rule in order to count the day of delivery as starting calculation of the new service standard delivery time. Mailers will therefore have to alter their work schedules and employee reporting times to be able to deliver mail to the USPS in order to be able to count the day of delivery as starting calculation of the service standard delivery time.

If mailers, including APWU, adjust their production and delivery schedules and alter their work schedules and employee reporting times to be able to deliver mail to the USPS in order to be able to count the day of delivery as starting calculation of the service standard delivery time they will make substantial changes and incur significant costs in doing so; and their employees will have to make significant changes in their work and home schedules. Also, thousands of employees represented by APWU will have to change their work schedules and home schedules to conform to the new work schedules at mail processing facilities. Such changes will have financial and home life impacts on those employees. If the USPS were to reverse its decision after receipt of the Commission's Advisory Opinion the affected employees would then face additional financial costs and additional home life disruptions.

II. ARGUMENT

A. An Emergency Order is Warranted

APWU respectfully submits that the Commission should issue an emergency order requiring that the USPS refrain from implementing the changes proposed in the New Rule and related operational changes until after the Commission rules on APWU's complaint because the New Rule published by the USPS on May 21, 2012, indicates that it will implement interim rule changes on July 1, 2012; the USPS has not withdrawn its statements to that effect, and the Commission will not issue its Advisory Opinion until after July 9, 2012, at the earliest. Furthermore, while APWU has filed a complaint seeking an order requiring the USPS not implement the proposed changes until after the Commission issues its Advisory Opinion, under 39 CFR § 3030.30, the Commission has ninety days from the filing of a complaint to either initiate proceedings on the Complaint or to dismiss the complaint. Even if the Commission acts promptly to initiate proceedings on APWU's complaint, the Commission is not likely to rule on APWU's complaint prior to July 1, 2012.

APWU therefore requests that the Commission issue an emergency order, in the nature of a preliminary relief, barring the USPS from implementing the changes proposed in the New Rule prior to the Commission ruling on APWU's complaint.

In support of this motion, APWU submits that it has satisfied all of the elements typically required in requests for temporary or preliminary relief including: 1) a demonstration of substantial likelihood of success on the merits of its complaint; 2) a demonstration of irreparable harm to APWU; 3) a demonstration that the potential harm to APWU by the denial of the requested emergency order exceeds the potential harm to the USPS if the order sought by APWU is granted; and 4) a demonstration that issuance of such an order is consistent with the public interest. *Buchanan v. USPS*, 508 F.2d 259, 266 (5th Cir. 1975); *see e.g. Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011); *Gordon v. Holder*, 632 F.3d 722, 724 (D.C. Cir. 2011); *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 842-843 (D.C. Cir 1977).

B. There is a Substantial Likelihood that APWU Will Prevail on the Merits of Its Complaint

Whenever the Postal Service seeks to enact a change in the “nature of service” that will have a nationwide or substantially nationwide impact, the Postal Service must file a request with the Commission for review of the proposed changes. 39 U.S.C. § 3661. The Commission must advise the Postal Service whether its strategy for changing its mail processing network comports with the policies of the Postal Reorganization Act (“PRA”) as revised by the Postal Accountability and Enhancement Act (PAEA). *Id.* at § 3661(b). The advisory opinion must include “certification by each Commissioner agreeing with the opinion that in his judgment the opinion conforms to the policies established under [the Act]”. *Id.* at § 3661(c). In Docket No. N2012-1 the Postal Service has proposed changes in service standards for First Class mail, periodicals and standard mail and related operational changes described in the USPS’ September 21, 2011 ANPR and December 15, 2011 NPR. However, on May 21, 2012, the Postal Service published a New Rule in the Federal Register that materially alters the proposal under review in Docket No. N2012-1. The Postal Service has not filed a request for an advisory opinion on the changes proposed by the New Rule and intends to begin implementation on July 1, 2012, a mere 40 days after its announced changes.

There is a substantial likelihood that APWU will prevail on the merits of its complaint because if the Postal Service puts the rule changes described in the New Rule into effect by July 1, 2012, the Postal Service will have effected a “change in the nature of postal service which will generally affect service on a nationwide or substantially nationwide basis” without seeking an advisory opinion from the Commission “within a reasonable time prior to the effective date” of the changes. 39 U.S.C. § 3661(b). Longstanding judicial and Commission precedent clearly supports this claim. In *Buchanan v. United States Postal Service*, three Congressmen, acting on behalf of a class of postal users, sought to enjoin the Postal Service from implementing three programs prior to seeking an advisory opinion from the Postal Rate Commission pursuant to Section 3661 of Title 39. 506 F.2d 259 (5th Cir. 1975). The three programs at issue were (1) a plan to consolidate and eliminate district offices throughout the United States; (2) a retail analysis program (“RAP”); and (3) the “national bulk mail system program.” *Id.* at 262. The United States District Court for the Northern District of Alabama granted a temporary injunction for the consolidation of district offices and the RAP. *Id.* The Postal Service appealed this decision. On appeal, the Fifth Circuit Court of Appeals upheld the District Court’s decision pertaining to the RAP. *Id.* at 266-67. The Court of Appeals explained that for the requirements of Section 3661 to apply

First, there must be a “change.” This implies that a quantitative determination is necessary. There must be some meaningful impact on service. Minor alterations which have a minimal effect on the general class of postal users do not fall within 3661. Second, the change must be “in the nature of postal services.” This involves a qualitative examination of the manner in which postal services available to the user will be altered. Third, the change must affect service “on a nationwide or substantially nationwide basis.” A broad geographical area must be involved. These three factors combine to demonstrate that Congress intended the safeguards of 3661 to apply only when changes of significance were contemplated.

Id. at 262. The changes proposed by the USPS in the New Rule will reduce mail delivery service experienced by users of the mail throughout the country. Therefore, these changes clearly rise to the level of significance warranting Commission review and the Postal Service must file a request before implementing these changes.

If the Postal Service puts the rule change described in the NPR, which is the focus of the Postal Service filings in Docket No. N2012-1 on July 1, 2012, or before the Commission issues its Advisory Opinion, the USPS will have effected a “change in the nature of postal service which will generally affect service on a nationwide or substantially nationwide basis” without considering an Advisory Opinion of the Commission as required by Section 3661(b), which would render the role of the Commission and its Advisory Opinion nugatory. Any Advisory Opinion issued after the changes were implemented would be meaningless and would not fulfill the purpose intended by Congress in enacting Section 3661. Since the requirements of Section 3661 are clear and unambiguous, and since the USPS would obviously fail to comply with those requirements if it implemented the proposed changes prior to the Commission’s issuance of its Advisory Opinion, there is a substantial likelihood that APWU will prevail on the merits of its complaint.

Furthermore while the Postal Service may assert that the New Rule is a mere modification to the proposal it submitted to the Commission in N2012-1 and therefore, it has satisfied the requirements of Section 3661. This argument is unsupported by the record. Under Rule 74 of the Commission’s Rules, when the Postal Service seeks an advisory opinion from the PRC on changes in the nature of postal services, it’s request “shall include such information and data and such statements of reasons and basis as are necessary and appropriate to fully inform the Commission and the parties of the nature, scope, significance and impact of the proposed change in the nature of postal services and to show that such change in the nature of postal service is in accordance with and conforms to the policies established under the Act.” The Postal Service has stated that “[t]he interim version of the new rules differs from the final version in three respects:

- (1) the interim version applies an overnight service standard to all intra-Sectional Center Facility (SCF) First-Class Mail, regardless of the point of entry or level of preparation, whereas the final version applies it only to intra-SCF First-Class Mail pieces that are entered at the SCF and meet specified preparation and entry time requirements;
- (2) the interim version applies a two-day service standard to First-Class Mail pieces if there is a six-hour or less driving time between the pieces’ origin Processing and Distribution Center or Facility (P&DC/F) and destination Area Distribution Center (ADC), whereas the final version applies it if there is a

six-hour or less driving time between the pieces' origin P&DC/F and destination SCF; and (3) the interim version modifies the delivery day range for end-to-end Periodicals in the contiguous forty-eight states from the current one to nine days to two to nine days, while the final version modifies it further to three to nine days (under both the interim and final versions, there will continue to be an overnight service standard for qualifying destination-entry Periodicals).

These differences are material, yet the Postal Service has provided no evidence to enable the Commission and participants to evaluate whether the changes encompassed in the New Rule will comply with the policies of Title 39. The record evidence in Docket No. N2012-1 is comprised almost exclusively of information related to the changes proposed in the September 2011 ANPR and the December 2011 NPR. This information does not address all of the changes and related concerns raised by the New Rule.

More importantly, there is no evidence in the record in this case to support the link the Postal Service has made implicitly between the closure of approximately 48 facilities between now and the end of 2012 and the reduction of service standards on July 1, 2012. The record indicates, instead, that the Postal Service could follow its usual AMP process, closing only facilities that it can close while maintaining current service standards, and still be able to close the same number of facilities this year without reducing service standards. By that simple means, the Postal Service would be able to receive and consider the Commission's Advisory Opinion before cutting service standards.

For example, examination of the impacts of the ANPR and NPR did not appear to raise concerns over whether the Postal Service intends to provide better service to large mailers because overnight delivery had essentially been eliminated for all mailers. Conversely, the New Rule will continue overnight delivery for intra-SCF First Class Mail that is entered at the SCF and is properly prepared and meets entry requirements. Consequently, the New Rule implicates the policies of Title 39 detailing workshare discounts because an increase in service received for performing workshare activities all else the same, could arguably equate to a de facto workshare discount. Yet, examination of this issue and potentially many more have been foreclosed by the Postal Service's actions. The Commission's duty to issue an advisory opinion is thwarted

when the Postal Service does not provide information necessary to evaluate the proposal fully. In docket N1975-1, this Commission acknowledged as much when it stated

it is not enough for this Commission, in a § 3661 case, merely to approve or disapprove the stated goals of a Postal Service program; we must also attempt to predict how efficiently it will achieve those goals and offer suggested improvements as are supported by the record.²

Additionally, the Court of Appeals in *Buchanan* recognized that

Two of the basic policies underlying the Postal Reorganization Act pull in different directions. The Postal Service emphasizes the goal of vesting in management the freedom to make decisions without external constraints. The plaintiffs counter with the goal of providing to the American people a public service which is sensitive and responsive to their needs. Although these policies conflict to some extent, we think a balance may be struck whereby management is given the freedom to manage without unnecessary limitations and the public is given an opportunity to present their views on decisions of the Postal Service which affect them.

If the Postal Service is permitted to enact the changes in the New Rule on July 1, 2012, the public will be denied the opportunity to present their views on the changes. This is contrary to the requirements of Title 39 as articulated by the Court in *Buchanan* and in Commission precedent.

Because the proposed changes in the New Rule are clearly changes in the nature of postal services with a nationwide impact, but have not been subject to Commission review as required by Section 3661 of Title 39, there is a substantial likelihood that the APWU will succeed on the merits of its complaint.

C. APWU and Others Will Suffer Irreparable Harm Absent an Emergency Order

APWU further submits that if emergency relief is not granted, APWU and others will suffer irreparable harm. If the USPS implements the rule change described in the New Rule published May 21, 2012 on July 1, 2012, the public will be foreclosed from a

² Commission Policy Statement Establishing Guidelines Concerning the Filing of Future Requests for Advisory Opinions Pursuant to § 3661, p. 3907.

meaningful opportunity to present their views on decisions of the Postal Service which will greatly impact them.³ Thus one of the critical policies of Title 39 as recognized by the Court in *Buchanan* will be rendered insignificant. Moreover, the Commission will be foreclosed from providing meaningful advice on the changes proposed by the New Rule as required by Section 3661 of Title 39.

If the USPS puts the rule changes in effect on July 1, 2012, the USPS will render the PRC and the requirements of Section 3661 nugatory; and the proceeding in Docket No. N2012-1 will be rendered meaningless. There would be no remedy for the harm done to APWU and others by premature implementation of the proposed changes because implementation of the changes would negate the effect and value of any subsequently issued Advisory Opinion. Furthermore, if the USPS puts the proposed rule changes into effect on July 1, 2012, that will irrevocably change the nature of the Commission's proceedings in Docket No. N2012-1 from proceedings for an Advisory Opinion on a proposed change to the Postal Service's service standards and related operational and organizational changes, to proceedings on whether the changes already implemented by the USPS should be reversed.

Additionally, if the USPS puts the proposed changes into effect on July 1, 2012, the USPS will incur substantial costs in implementing the proposed changes and would incur additional substantial costs if it sought to undo the changes it had already made; such that the USPS is likely to assert that the cumulated costs of the original changes and of reversing those changes would be so great as to effectively preclude reversal of the premature changes; and the harm to APWU and other participants in the Commission's proceedings due to the premature changes would then be irreparable.

Also, if the USPS puts the proposed rule changes into effect on July 1, 2012, mailers, including APWU, will have to adjust their production and delivery schedules for delivery of items to be mailed at the new delivery times established by the rule change in order to count the day of delivery as starting calculation of the service standard delivery time; mailers will incur substantial costs by conforming their own operations to the new USPS service standards rules and related changes; they would incur

³ Because the New Rule was filed as a Final Rule in the Federal Register, there was no opportunity for public input on the new changes.

substantial additional costs if the USPS was to reverse the planned changes; and the costs of conforming to the new standards and then reversing the changes made to conform to the new standards would be so substantial for the mailers, including APWU, that it would be impractical to reverse the service standard changes such that the harm done to mailers by the changes to the service standards will not be able to be remedied in the event the Commission's Advisory Opinion recommends against the proposed changes. Therefore, APWU and others will be irreparably harmed in the absence of the preliminary relief requested.

D. The Balance of Harms Favors Granting Preliminary Relief

The potential effects on the USPS by an order requiring that it refrain from effecting the proposed service changes until after the Commission rules on APWU's complaint are limited in that the USPS would not have to do anything and would only have to refrain from making changes until the Commission rules on APWU's complaint.

APWU also notes that while the USPS Request sought expedited action in Docket No. N2012-1 proceeding, it did not assert that an immediate order was necessary. The Commission established a case schedule after the USPS filed its Request; and that schedule was predicated on the time the Commission believed was necessary for it to perform its statutory function. While the USPS sought alteration of the case schedule, that request was denied by the Commission. Additionally, the USPS never suggested a revised schedule that would result in a decision within the time frame the USPS desired; and the schedule proposed by the USPS at the scheduling hearing would have provided for submission of reply briefs in mid-June only a little more than one month less than the schedule established by the Commission and more than two months after the date for decision sought by the USPS in its motion for reconsideration. Accordingly, by its prior statements in this proceeding the USPS has acknowledged that it will not be substantially harmed by an order requiring that the USPS refrain from implementing the proposed changes until after an Advisory Opinion by the Commission. Furthermore, on June 12, 2012, the APWU filed supplemental testimony in Docket No. N2012-1 demonstrating that the Postal Service can make the operational changes it has

proposed while maintaining the current service standards.⁴ Therefore, the Postal Service's flexibility to make operational changes will not be impacted.

The balance of potential harms to the mailers and others as against the potential harm to the USPS resulting from an order requiring the USPS to refrain from making any changes until the Commission rules on the complaint is such that the balance of potential harms supports issuance of the emergency order sought by APWU. As APWU has shown, the harm to it and others by premature implementation of the rule change and related operational changes is substantial, that harm cannot be remedied by a favorable decision on APWU's complaint issued after the changes are made and the USPS will not suffer comparable harm if the emergency order is granted.

E. The Requested Preliminary Relief is in the Public Interest

Issuance of the emergency order sought by APWU is also consistent with the public interest. In this instance the public interest is established by Section 3661 of Title 39 which expressly requires that the USPS seek an Advisory Opinion from the Commission when the USPS determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, that the Commission hold hearings and allow interested persons to participate in those hearings, and that the USPS not act without considering an Advisory Opinion of the Commission as to whether the change conforms to the policies established under the Act. Additionally, the Commission has already concluded that the schedule set for this case under which final briefs would be due July 9, 2012 (or July 20, 2012, if surrebuttal testimony is presented in N2012-1), after the date the USPS plans to implement the changes that would flow from modification of the service standards is in the public interest because the Postal Service Request was complex, including the testimony of 13 witnesses and over 50 library references, and that the USPS desire for expedited handling had to be balanced against the Commission's obligation to afford due process to participants in the proceeding. Since this holding by the Commission

⁴ Supplemental Testimony of Pierre Kacha of Decision/Analysis Partners on Behalf of the American Postal Workers Union, AFL-CIO, at 3 (June 12, 2012).

was issued, approximately 22 additional pieces of testimony have been filed and the number of library references has doubled.

Furthermore, the Postal Service has changed its proposal and now intends to implement service standard changes and related operational changes consistent with its New Rule published on May 21, 2012. To date, minimal evidence has been provided to the Commission for examination in Docket No. N2012-1. Participants were not provided the opportunity to conduct written discovery on the new proposal and no testimony or other evidence was filed on behalf of the Postal Service establishing that the New Rule complies with the policies and requirements of Title 39. The public interest strongly favors permitting a meaningful opportunity to examine and evaluate changes that the Postal Service proposes to make that will have a profound and lasting effect on the postal services provided to the public. The issuance of an emergency order prohibiting the Postal Service from implementing the proposed changes until after the Commission rules on the present complaint, would ensure that the Postal Service not prematurely enact changes in accordance with the this public interest.

III. CONCLUSION

For the foregoing reasons, APWU respectfully submits that the Commission should grant APWU's request for an emergency order directing the USPS not to implement any of the changes proposed under the New Rule or in the NPR until after the Commission rules on the APWU's complaint.

Respectfully submitted,

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